IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4256 of 2007()

: PETITIONER/ACCUSED

B.MOHAMMED, S/O.MAHIN, BENDAD MANJANGAT
PERUMBALA P.O., KASARAGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: RESPONDENT & STATE

STATION HOUSE OFFICER, KASARAGOD
POLICE STATION, REPRESENTED THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.4256 of 2007

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Dated this the 13th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the provisions of the Indian Electricity Act. Crime has been registered. The investigation is in progress. The petitioner apprehends imminent arrest. He, in these circumstances, prays that directions under Sec.438 of Cr.P.C may be issued in favour of the petitioner.

2. The learned Public Prosecutor on instructions submits that the petitioner is not required to be arrested by the Investigator now. Investigation is complete. Final report has already been filed. It is further submitted that cognizance has been taken and the case is pending as C.C.No.880/06 before the learned Chief Judicial Magistrate - Kasargod. The petitioner can surrender before the learned Magistrate and seek regular bail, he submits.

3. The learned counsel for the petitioner submits that at any rate, the Police was not entitled to file final report. The learned Magistrate is not legally competent to take cognizance on the basis of such report in the light of the decision in **Paramasivan Vs.Union of**

India [2007 (2) KLT 733]. In the interests of justice directions may be issued under Sec.438 of Cr.P.C in favour of the petitioner.

4. This application for anticipatory bail is not opposed by the learned Public Prosecutor. I find merit in the prayer of the learned counsel for the petitioner. Of course the petitioner can surrender before the learned Magistrate and claim premature termination of proceedings in the light of the decision in **Paramasivan Vs.Union of India** [2007 (2) KLT 733] supra, I am satisfied. In the light of the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a process issued by a court in a pending proceedings.

5. In the result, this application is allowed. The following directions were issued under Section 438 Cr.P.C.:-

i) The petitioner shall appear before the Learned Magistrate having jurisdiction at 11 a.m on 20.07.2007. He shall be enlarged on regular bail on his executing a bond for Rs.25,000/-(Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

ii) If the petitioner does not surrender before the learned Magistrate as directed in clause (i), all directions issued above shall

thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law.

iii) If the petitioner were arrested prior to their surrender on 20.07.07 to the learned Magistrate as directed in clause (i) above, he shall be released forthwith on his executing a bond of Rs.25,000/- (Rupees Twenty five thousand only) without any sureties undertaking to appear before the learned Magistrate on 20.07.07as directed in clause(i) above.

(R.BASANT, JUDGE)

sj